IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 85

CENTRAL STATES ELECTRIC COMPANY,
Petitioner,

vs.

CITY OF MUSCATINE, IOWA,

and

ELMER E. JOHNSON, for himself and the users of natural gas in the City of Greenfield, Iowa, et al.,
Respondents.

BRIEF FOR CENTRAL STATES ELECTRIC COMPANY.

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INTRODUCTION.

This case is before this Court on certiorari to the United States Circuit Court of Appeals for the Seventh Circuit (hereinafter called the "court below") granted on the petition of Central States Electric Company (hereinafter called "Central"). The decision under review denied Central's application for payment to it of a fund of $25,708.54 on deposit with the Clerk of the court below. This fund represents amounts paid for natural gas by Central to Natural Gas Pipeline Company of America in

excess of rates fixed therefor by a valid rate reduction order of the Federal Power Commission during the period of an improper stay of that order by the court below and deposited with the Clerk of that court by Natural Gas Pipeline Company of America and Texoma Natural Gas Company pursuant to a bond given by them to obtain the stay.

OPINIONS BELOW.

The court below did not render any opinion directly on the orders denying the relief sought by Central, but that court did render opinions prior to Central's appearance in the case which are material here. Such of these opinions as are officially reported are as follows: opinion of May 22, 1942 (R. 36-46) 128 Fed. (2d) 481; opinion of June 26, 1942 (R. 55-56) 129 Fed. (2d) 515; opinion of June 30, 1942 (R. 60-63) 134 Fed. (2d) 263; and opinion of September 3, 1942 (R. 67-80) 131 Fed. (2d) 137.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347a).

STATUTE INVOLVED.

The pertinent provisions of the Natural Gas Act of 1938 are set forth in Appendix A.

STATEMENT OF THE CASE.

Central during the period here involved (namely, from September 1, 1940, to March 31, 1942, which was the period of the stay by the court below of the rate reduction order of the Federal Power Commission (R. 51) and is hereinafter sometimes called the "refund period") was a corporation organized under the laws of the State of Iowa

and was engaged in the utility business in that State and elsewhere (R. 106). During this period Central purchased natural gas from Natural Gas Pipeline Company of America under contract with that Company (R. 109-110), which was then a natural gas company subject to the provisions of the Natural Gas Act and sold at wholesale the natural gas transported by it in interstate commerce to local distributors, such as Central, in Illinois, Iowa and elsewhere (R. 9, 10).

The issues presented hereby arise on the supplemental petition of Central for intervention (R. 106, 134) in proceedings ancillary to proceedings initiated by Natural Gas Pipeline Company of America and Texoma Natural Gas Company (hereinafter sometimes called the "Natural Gas Companies") in the court below under Section 19(b) of the Natural Gas Act (15 U.S.C. 717r(b)) (R. 7-8). The original proceedings (identified below as Cause No. 7454) were filed to review an interim rate order entered on July 23, 1940, as amended by an order entered August 8, 1940, by the Federal Power Commission, which directed the Natural Gas Companies to reduce their rates on natural gas so as to reflect an annual reduction in their operating revenues of not less than $3,750,000.00 and to make this reduction effective as to all bills regularly rendered on and after September 1, 1940 (R. 1-6, 7). The validity of this order was sustained by this Court in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, and this Court therein reversed the judgment of the court below vacating said order.

Prior to the commencement of Cause No. 7454 the Natural Gas Companies filed a petition in the court below, identified as Cause No. 7439, to obtain a temporary stay of the interim rate order pending the Natural Gas Companies' application for rehearing thereon before the Federal Power Commission (R. 32-35). Such a stay order

was entered on August 30, 1940, in Cause No. 7439, which stay order provided, among other things, the following:

> "That this order will become effective upon the execution and delivery to the Clerk of this court by petitioners of their joint and several bond in the penal sum of $1,000,000, conditioned on their refunding to those who purchased natural gas from petitioners at wholesale, as their several interests appear, the amount represented by the reduction in revenues as directed by the Federal Power Commission in its order dated July 23, 1940, if the order last mentioned be sustained" (R. 34).

The foregoing temporary stay order was dissolved on November 1, 1940 (R. 35).

Also on November 1, 1940, a stay order was entered in Cause No. 7454 staying the interim rate order until the further order of the court (R. 28-29). On November 26, 1940, an order was entered in Cause No. 7454, and in Cause No. 7439, which provided that as a condition to said stay order the Natural Gas Companies should forthwith file their bond without surety in the penal sum of $1,000,000.00, conditioned in all respects the same as the bond filed in Cause No. 7439 by the Natural Gas Companies (R. 29, 36).

On December 3, 1940, in conformity with the order of November 26, 1940, the Natural Gas Companies filed their bond in Cause No. 7454 conditioned as follows:

> "The condition of this obligation is such that if the undersigned shall pay or cause to be paid to the purchasers at wholesale of natural gas from Natural Gas Pipeline Company of America as their several interests appear the amounts representing the reduction in the gross revenues of Natural Gas Pipeline Company of America which shall have accrued pending judicial review of the order of the Federal Power Commission dated July 23, 1940, directing the undersigned, Natural Gas Pipeline Company of America, to

file new schedules of rates and charges to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of said Natural Gas Pipeline Company of America together with all costs which may be adjudged against them should said order last mentioned be sustained, then this obligation shall become null and void and of no further force and effect'' (R. 29-30).

The aforesaid bond was approved by order entered on December 3, 1940 (R. 31).

On March 16, 1942, this Court rendered its decision (315 U.S. 575) sustaining the interim rate order of the Federal Power Commission, and the Natural Gas Companies thereupon became liable to refund, in accordance with their aforesaid bond, the amount paid to them in excess of the rates permitted by that order during the period of the stay thereof.

On May 22, 1942, which was prior to payment of the amount due on the bond, the court below filed an opinion deciding that it was its mandatory duty to take exclusive jurisdiction and control over the refund (when made) and to determine the rights of all claimants thereto (R. 36-46). An order was entered on June 24, 1942, pursuant to this opinion by which the court took jurisdiction of the refund and enjoined all claimants thereto from proceeding in any other court (R. 51-52). It appears from the opinion that the Natural Gas Companies had by petition sought the relief granted by the order on the ground that suits had been filed against them in other courts by some of the ultimate consumers of gas sold to such consumers by the local distributors thereof and that unless the court below retained jurisdiction of the refund they would be subjected to numerous similar suits (R. 37-38). The Illinois Commerce Commission filed an answer in response to the petition of the Natural Gas Companies in which it was alleged that the rates charged by the local distributors

in Illinois were fixed by said Commission and necessarily reflect the prices paid by the local distributors to the Natural Gas Companies and that the refund representing the excessive rates paid by the local distributors was collected from the ultimate consumers and was equitably due them (R. 38). The Illinois local distributors then before the court (which did not include Central) agreed that the refund should eqaitably be paid to the ultimate consumers who purchased gas from them (R. 38). Since Central was not a party to this agreement, it could only affect the relations between the local distributors who were parties thereto and the ultimate consumers who purchased gas from them.

On June 29, 1942, Central wrote a letter to the Clerk of the court below, in response to a letter from him, in which letter Central asserted that the portion of the refund representing excessive rates paid by it during the refund period should be repaid to it and not paid to the ultimate consumers (R. 56-59).

On June 30, 1942, the court below rendered a memorandum opinion in which it purported to weigh and consider the relative rights and interests in general of all local distributors and ultimate consumers in the refund (R. 60-63). As a result of this consideration the court found that since the rates charged by the local distributors to the ultimate consumers included the excess charges paid by the local distributors to the Natural Gas Companies, the ultimate consumers were, in equity, entitled to receive this excess which was to be refunded by the Natural Gas Companies (R. 62-63). In other words, the court found that the local distributors in general, as stated in its opinion, were "merely conduits, by which natural gas transported by" the Natural Gas Companies "was delivered to customers by utilities" (R. 62).

In making the aforesaid finding, which apparently was based on the allegations contained in the above mentioned answer of the Illinois Commerce Commission and disclaimers of interest in the refund filed by the Illinois local distributors involved (R. 47-50) (but not by Central), the court below assumed jurisdiction to review the contractual relations between the local distributors and the ultimate consumers and to adjudge their respective equities in and to the refund presumably on the conclusion, not supported by evidence, that the rates charged to the ultimate consumers during the refund period in all events included the excessive rates paid by the local distributors during that period to the Natural Gas Companies. In other words, the court found that the local retail rates charged by the local distributors during the refund period were illegal and excessive. In effect, the court below by determining what the contractual relations between the local distributors and the ultimate consumers were or should have been during the refund period and by finding that the refund equitably belonged to the ultimate consumers assumed jurisdiction to and did retroactively reduce the local rates of the local distributors during the refund period. This determination was made and declared by the court to be generally binding on all local distributors even though Central was not then a party to the cause and had never by any means agreed to a reduction of the rates which it charged its customers.

On July 1, 1942, the Natural Gas Companies, in accordance with their aforesaid bond, deposited with the Clerk of the court below the sum of $6,377,913.52 (R. 64-65). This sum, exclusive of interest included therein, represented that part of the rates in excess of the rates permitted by the rate order paid to the Natural Gas Companies by the local distributors (including Central) for natural gas purchased by them from the Natural Gas Companies

during the refund period (R. 29, 30, 36, 37), namely, the period from September 1, 1940, to March 31, 1942.

Thereafter, in conformity with the aforesaid opinions of May 22, 1942, and June 30, 1942, the court below entered a show cause order which, among other things, (a) fixed the refund period as the period from August 1, 1940, to March 31, 1942, inclusive, (b) determined that the fund of $6,377,913.52, less all fees, costs and expenses of distribution thereof, was the property of the ultimate consumers of the natural gas purchased by the local distributors from the Natural Gas Companies and was not the property of such local distributors, (c) allocated said fund to certain but not all of the ultimate consumers or customers of the various local distributors, including Central's ultimate consumers, who were allocated the sum of $25,708.54, (d) found that industrial and home heating users of gas should not participate in the refund, (e) reserved jurisdiction of said fund for the purpose of protecting all persons having rights therein, and (f) directed all claimants to said fund to show cause why the order should not be binding on them (R. 67-80).

Notwithstanding the above opinions and orders, the court below expressly recognized that the same were not binding on Central by entering an order on November 24, 1942, in which it found that Central had raised an issue as to whether it or its consumers were entitled to the refund (amounting to $25,708.54) and directed that such amount should be segregated from the remainder of the fund and dealt with separately (R. 81-82). This order undoubtedly was entered as a consequence of Central's above mentioned letter to the Clerk of the court below under date of June 29, 1942, since Central did not become a party to the proceedings until almost a year after the entry of this order.

On September 1, 1943, Central became a party to the proceedings by filing its petition in intervention (R. 106) with the court below praying that said sum of $25,708.54 be paid to it and not to the ultimate consumers (R. 106-114½). Central was then granted leave to intervene (R. 115).

In said petition it is in substance alleged that Central had not theretofore been a party to these proceedings or to the proceedings b the Federal Power Commission (R. 106); that it purchased natural gas from Natural Gas Pipeline Company of America during the refund period under contract with that Company (R. 109-110); that said sum of $25,708.54 represents amounts paid by Central for natural gas during the refund period in excess of the rates fixed therefor by the Federal Power Commission (R. 106); that Central sold more than 81% of the gas so purchased by it, without profit or advantage, to Iowa Electric Company, which resold the same to 2,432 consumers in Muscatine, Iowa (R. 107-108); that it sold the balance of such gas directly to 320 consumers in Greenfield, Iowa, to 590 consumers in Knoxville, Iowa, and to 366 consumers in Pella, Iowa (R. 108); that less than 12½% of the gas sold in Knoxville and Pella consisted of natural gas (R. 108); that Iowa Electric Company has transferred all its rights in and to said fund of $25,708.54 to Central for the purpose of these proceedings (R. 108, 111-112); that by law in Iowa the power to fix rates for gas service is vested in its municipalities and utility operations in Iowa are not regulated by any state agency or commission (R. 107); that Iowa Electric Company (since 1932 when Central first purchased natural gas from Natural Gas Pipeline Company of America (R. 109)) from time to time voluntarily reduced gas rates in Muscatine in order to meet competitive conditions and to increase the volume of its business (R. 110, 107); that the rates

for natural gas prevailing between Iowa Electric Company and its consumers in Muscatine were approved by resolution of the Council of Muscatine (R. 110); that such rates as so approved remained static between August 6, 1936, and February 4, 1943 (R. 110, 112-114); and that due to competitive conditions in rural communities as contrasted with conditions in urban centers, Iowa Electric Company resold natural gas in Muscatine, Iowa, during the refund period at rates which were insufficient to produce a fair return on its investment (R. 107, 109-110, 114½).

On November 6, 1943, an order was entered on Central's petition which again recognized that the fund of $25,708.54 had theretofore been segregated by the court below from the total fund and ordered to be dealt with separately (R. 115). This order directed that the Attorney General of the State of Iowa and the purchasers of natural gas from Central and their respective municipal representatives in Muscatine and Greenfield be notified of Central's claim to the fund and that they show cause why the relief sought by Central should not be granted (R. 115-116). A copy of this order was published in Muscatine and Greenfield (R. 124, 125). Apparently the court through oversight did not require notice of Central's petition to be given to the consumers in Knoxville and Pella or to any of the public officials in those cities.

Pursuant to the aforesaid order and notice thereof, Muscatine and the Mayor of Greenfield, purporting to represent the consumers in those cities, filed separate pleadings in response to the petition of Central in which they asserted that the fund of $25,708.54 belongs to such consumers (R. 116-121, 122-123, 126-128).

In the pleadings of Muscatine it is in substance alleged that Muscatine is a municipal corporation existing by special charter granted by the Legislature of the State of

Iowa (R. 117); that the rates for gas service in Muscatine during the refund period were fixed by agreement with Iowa Electric Company and approved by ordinance adopted by the Council of Muscatine (R. 117); that Exhibit 2 attached to Central's petition correctly states the gas rates in Muscatine as fixed by ordinances of its Council adopted at various dates between July 9, 1932, and February 4, 1943 (R. 117); that Muscatine had not theretofore been a party to these proceedings (R. 117); that Iowa Electric Company failed to divulge to Muscatine or the ultimate consumers that the wholesale rates for natural gas had been reduced by the Federal Power Commission or that the decree of the court below of September 3, 1942, had allocated the fund of $25,708.54 to the ultimate consumers (R. 117-118); that neither Muscatine nor the ultimate consumers had prior knowledge of these proceedings, the aforesaid rate reduction, or the allocation of said fund of $25,708.54 to them (R. 117, 118); that Muscatine appears in these proceedings as the representative of the consumers of gas in that city whose names are unknown to it (R. 118); that the facts alleged in Central's petition regarding the failure of Iowa Electric Company to earn a fair return on its investment during the refund period are untrue (R. 119-120); and that since Iowa Electric Company voluntarily agreed to the rates prevailing between it and its consumers during the years 1932 to 1943, it is now estopped to assert that such rates were insufficient to produce a fair return on its investment (R. 126-128).

The pleadings of the Mayor of Greenfield cannot properly be said to present issues in addition to those presented by the pleadings of Muscatine (R. 122, 123).

On February 14, 1944, the court below without hearing any evidence in support of Central's petition entered an order denying the same "without prejudice" to Central's

"making claim of adjustment with the Cities of Muscatine, Greenfield, Knoxville and Pella, all of the State of Iowa, or with the consumers of gas furnished by it in said Cities" (R. 129). The bases of this order as recited by the court therein were that it was without jurisdiction to hear Central's claim since it involved a determination of "the reasonableness of petitioner's rates" and that the court had previously ruled that the refund made by the Natural Gas Companies belonged to the ultimate consumers (R. 129).

In a separate order entered on the same day the court below directed that the sum of $25,708.54 be paid to the Treasurers of the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, in various amounts (R. 130-131). Apparently the court in fixing the amount payable to each municipality allocated 81% of the fund to Muscatine because Central's petition alleged that Iowa Electric Company sold more than 81% of the gas purchased by Central from Natural Gas Pipeline Company of America to consumers in that city, and divided the balance of the fund between the other three municipalities on the basis of the number of consumers in each of those cities as set forth in Central's petition. In so allocating the fund it is obvious that the court below failed to give consideration to the fact alleged in Central's petition that less than 12½% of the gas sold in Knoxville and Pella during the refund period consisted of natural gas. As grounds for its said order, the court stated therein that the fund of $25,708.54 belonged to the ultimate consumers of gas residing in the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, and that the court desired to pay said fund at the earliest possible time "to such parties as are entitled to the same and to permit of a determination of said rights by a court or body having jurisdiction thereof" (R. 130).

By the aforesaid orders of February 14, 1944, the court below, while disclaiming jurisdiction, nevertheless assumed jurisdiction to award said sum of $25,708.54 to the ultimate consumers and thereby retroactively reduced their rates during the refund period. This necessarily involved a finding that the retail rates prevailing during the period, as fixed by the ordinances of the four municipalities involved, were exorbitant and excessive and resulted in a fixing of such rates by the court. Such action apparently was taken on the basis announced by the court in its opinion of June 30, 1942 (R. 60-63), to the effect that the excessive rates paid by the local distributors (including Central) to the Natural Gas Companies during the refund period were included in the rates paid by the ultimate consumers during that period. Also this decision was made notwithstanding Central's claim that in its particular case the excessive rates paid by it to the Natural Gas Pipeline Company of America during the refund period were not included in the rates paid by the ultimate consumers in Muscatine during that period inasmuch as Iowa Electric Company did not then earn a fair return on its investment (R. 109-111, 114½).

On March 11, 1944, Central filed its supplemental petition setting forth additional grounds for the payment to it of said sum of $25,708.54 (R. 133-134). This supplemental petition shows as grounds for payment to Central of said sum that:

1. Central was legally entitled to payment of said sum because (a) said sum represented excessive rates paid by Central to Natural Gas Pipeline Company of America, which except for the stay order entered by the court below would have been retained by Central; (b) the rate order of the Federal Power Commission reduced the rates prevailing between Central and Natural Gas Pipeline Company of America, and

Central as the only party in privity with said Company was entitled to the benefit of the rate reduction; and (c) the aforesaid bond filed by the Natural Gas Companies to procure the stay order was conditioned on repayment of the excessive rates to the purchasers at wholesale (namely, the local distributors, including Central) (R. 134-139).

2. The court below was without jurisdiction to award said sum to Central's ultimate consumers because (a) awarding said sum to them was tantamount to a retroactive reduction of the rates between Central and its ultimate consumers during the refund period, and the court decided by its orders of February 14, 1944, that it was without jurisdiction to determine the reasonableness of local rates; (b) the Natural Gas Act by its express terms does not apply to the local distribution of natural gas or to the facilities used for such distribution; and (c) the jurisdiction and powers of the court below in these proceedings are not only derived from but are limited by the terms of the Natural Gas Act, which denies any jurisdiction over the transportation or sale of natural gas between a local distributor and its ultimate consumers (R. 134-139).

3. It was inequitable for the court below to award said sum to Central's ultimate consumers because (a) the court's finding that such consumers were equitably entitled to said sum was based on a conclusion of fact (unsupported by any evidence whatsoever) that the burden of the excessive rates paid by Central to Natural Gas Pipeline Company of America during the refund period had been passed on by it to such consumers who had paid the same; and (b) the court disclaimed jurisdiction (on the theory that it was beyond its power to determine the

reasonableness of local rates) to hear any evidence in support of Central's claim that it was equitably entitled to said sum because it and not the ultimate consumers had borne the burden of such excessive rates, yet the court at the same time inconsistently assumed jurisdiction to determine that the ultimate consumers had borne the burden of such excessive rates (R. 134-139).

Muscatine and the Mayor of Greenfield filed responses to Central's supplemental petition in which they alleged that the fund of $25,708.54 belonged to the ultimate consumers for the reason that the rights of Central therein had been concluded by the decree of the court below of September 3, 1944, awarding the entire refund to the ultimate consumers (R. 140-143).

Central was granted leave to file its supplemental petition and the same was denied on March 28, 1944, without any hearing or argument on the issues raised thereby (R. 146).

Muscatine and the Mayor of Greenfield do not allege in their respective pleadings that the ultimate consumers paid rates to Central during the refund period in excess of those fixed by their respective ordinances; that the rates as so fixed were exorbitant and excessive; or that the ultimate consumers did not voluntarily pay such rates (R. 116, 122, 126, 140-144).

Neither Knoxville nor Pella nor the ultimate consumers therein made any claim in these proceedings to any part of said fund of $25,708.54 and no pleadings were filed herein by or on their behalf.

SPECIFICATION OF ERRORS.

Central in its petition for the writ of certiorari specified the questions as follows (Pet. 12, 13, 14):

1. Whether under the Natural Gas Act a purchaser at wholesale of natural gas from a natural-gas company is entitled, as a matter of legal right, to a return of rates paid therefor by the purchaser to such company in excess of the rates fixed by a valid order of the Federal Power Commission during the period of a stay of such order by a Federal court?

2. Whether under the Natural Gas Act a Federal court can deprive a wholesale purchaser of natural gas from a natural-gas company of the benefit of a valid rate reduction order of the Federal Power Commission by staying such order and after determination that such stay is erroneous then direct that the fund representing the excessive rates paid by the wholesale purchaser to the natural-gas company as a result of the stay be turned over to the ultimate consumers of such gas and not returned to the wholesale purchaser?

3. Where funds are paid into the registry of a Federal court pursuant to a bond deposited to obtain a stay of a rate order of the Federal Power Commission, which bond is conditioned for repayment to the purchaser at wholesale of natural gas from a natural-gas company in the event the stay on review appears to be erroneous, and such event occurs, may a Federal court nevertheless direct the payment of such funds to the ultimate consumers of such gas rather than to the purchaser at wholesale?

4. Whether under the Natural Gas Act a Federal court denying its own jurisdiction may nevertheless in effect exercise jurisdiction to inquire into and regulate the contractual relationship between a local

distributor of natural gas and the ultimate consumers of such gas?

5. Whether under the Natural Gas Act a Federal court has jurisdiction to retroactively reduce rates between a wholesale purchaser of natural gas from a natural-gas company and the ultimate consumers of such gas by awarding to such consumers a fund deposited in the registry of the court as the result of an erroneous stay of a valid order of the Federal Power Commission reducing rates between the natural-gas company and the wholesale purchaser?

6. Whether under the Natural Gas Act a Federal court which has erroneously stayed a valid rate reduction order of the Federal Power Commission and thereby caused a fund to be deposited in its registry may thereafter when its stay has been found erroneous determine, without a hearing or the presentation of evidence of any kind and while disclaiming any jurisdiction in the matter, that the fund represents excessive rates paid by the ultimate consumers of the natural gas involved and that they rather than the wholesale purchaser of such gas are equitably entitled to said fund?

7. Whether under the Natural Gas Act a Federal court which by exercise of its equitable powers has caused a fund to be deposited in its registry may thereafter refuse to determine finally the rights of adverse claimants to the fund and turn the same over to one of the rival claimants and compel the other rival claimant to resort to some other tribunal to have its asserted rights adjudicated?

8. Whether a Federal court may order the payment of a fund, which belongs either to a wholesale purchaser of natural gas or to the ultimate consumers thereof and is on deposit in its registry, to an Iowa municipal corporation which under the laws of that

State is without authority to receive, administer or distribute such fund?

9. Whether a Federal court may direct the payment of a fund on deposit in its registry to parties not subject to its jurisdiction and who have failed to claim such fund in response to a show cause order entered by the court?

Generally stated, Central's contentions on the above questions are that the court below by its orders of February 14, 1944 (R. 129, 130, 131) and March 11, 1944 (R. 146) erred in the following respects:

1. By awarding the fund of $25,708.54 to the ultimate consumers of the natural gas sold by Central during the refund period, because such action (a) disregarded the cooperative dual system of regulation by the Federal and State Governments provided for in the Natural Gas Act and interfered with the power reserved to the States by the Constitution and (b) constituted the fixing of local retail rates for natural gas which was beyond the jurisdiction of the court below and involved the usurpation by a judicial body of the legislative function of fixing such rates;

2. By failing to hold that said fund belongs to Central as a matter of legal right, because such result is required (a) by the provisions of the Natural Gas Act, (b) by the applicable common law principles, and (c) by the terms of the bond filed by the Natural Gas Companies to obtain the stay order entered by the court below;

3. By directing payment of said fund to the four municipalities involved, because such action disregarded the mandatory duty of the court below to exercise its limited jurisdiction to adjudicate Central's rights in said fund.

ARGUMENT.

I.

THE TRANSPORTATION AND SALE OF NATURAL GAS IS REGULATED BY THE FEDERAL AND STATE GOVERNMENTS THROUGH A COOPERATIVE DUAL SYSTEM UNDER WHICH THE FEDERAL GOVERNMENT EXERCISES EXCLUSIVE POWER TO REGULATE TRANSPORTATION AND SALE IN INTERSTATE COMMERCE AND THE STATES EXERCISE EXCLUSIVE POWER TO REGULATE LOCAL RETAIL DISTRIBUTION.

A. Prior to the enactment of the Natural Gas Act the principle was well established by case law that the Federal power of regulation was limited to interstate transportation and sale of natural gas and that local distribution at retail was subject to the control of the several States.

Prior to the enactment of the Natural Gas Act (enacted June 11, 1938) this Court established the principle that regulation of the local distribution and sale of natural gas by local utilities was a matter subject to control by the several States (in so far as such regulation did not violate the Fourteenth Amendment of the Constitution) and that such regulation did not constitute interference with the power of Congress under the interstate commerce clause of the Constitution. Thus in *Public Utilities Commission* v. *Landon*, 249 U.S. 236, this Court held that an interstate carrier of natural gas which sold the same, at a price equal to two-thirds of the retail price thereof, to independent local distributors operating under special municipal ordinances was not entitled to any relief from the retail rates therefor fixed by the local regulatory bodies. This decision was premised on the ground that the inter-

state movement ended when the natural gas passed into the local mains of the independent local distributors and that the local rates as fixed by the local regulatory bodies, although not compensatory so far as the interstate carrier was concerned, did not interfere with interstate commerce.

Also, prior to June 11, 1938, this Court established the principle that the several States could not regulate the interstate transportation and sale of natural gas, inasmuch as such regulation constituted an unreasonable interference with the power of Congress under the commerce clause of the Constitution, even though Congress had not legislated in this particular field. This principle was announced in *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U.S. 298. Therein it was held that the local regulatory bodies of Kansas and Missouri could not regulate the rates at which an interstate carrier of natural gas sold the same to local distributors, as such action placed an unreasonable burden upon interstate commerce.

Additional decisions of this Court amplifying the principles stated above are:

Pennsylvania Gas Company v. *Public Service Commission*, 252 U.S. 23;

Peoples Natural Gas Company v. *Public Service Commission*, 270 U.S. 550;

State Corporation Commission v. *Wichita Gas Company*, 290 U.S. 561.

B. State legislation regulating the local distribution at retail of natural gas was enacted in most States prior to the passage of the Natural Gas Act.

As early as 1876 this Court recognized the right and power of the several States to regulate local businesses affected with a public interest, even though such regulation indirectly operated upon interstate commerce (*Munn* v. *People of Illinois*, 94 U.S. 113). As a result of this

recognition, regulation by the States of the local distribution and sale of natural and artificial gas by local utilities became firmly established in their legislation. This regulation is embodied in legislative acts whereby the State Legislatures usually delegated their regulatory power to commissions exercising statewide control or to their respective municipal corporations (McQuillin, Municipal Corporations, 2d Edition, Revised Volume 4, Sections 1875, 1876), and this legislation has been constantly improved and extended according to the requirements of experience and changing circumstances. Thus at the time the Natural Gas Act was passed the several States had already created machinery fully competent to deal with the local distribution and retail sale of natural gas to the ultimate consumers, and this Court will take judicial notice of the State statutes creating the same (*Cheever* v. *Wilson*, 76 U.S. 108).

The Legislature of Iowa has delegated to its municipalities the power to regulate the local distribution and retail sale of natural gas. Under Section 6143 of the Iowa Code of 1939 (App. B 62), which was passed long prior to the Natural Gas Act, Iowa municipalities are vested with the exclusive power "to regulate and fix the rents or rates of water, gas, heat and electric light or power," and it is therein provided that this power shall not be abridged by ordinance, resolution or contract. Thus at the time of the effective date of the Natural Gas Act, as will hereinafter be more fully discussed, the State of Iowa had machinery existing for regulation of the rates at which natural gas might be sold to inhabitants of municipalities at retail.

C. The Natural Gas Act expressly restricts the power of Federal regulation to the transportation and sale of natural gas in interstate commerce and does not apply to local distribution.

It is clear from the legislative history of the Natural Gas Act that Congress intended thereby to complement and in no manner to usurp State regulatory authority. Any doubt whatsoever as to the intention of Congress in this regard is set at rest by House Report No. 709, 75th Congress, 1st Session, at pages 1 to 3. Therein the House Committee on Interstate and Foreign Commerce when it recommended the Act for passage by Congress stated as follows:

> "* * * It (the bill) confers jurisdiction upon the Federal Power Commission over the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See *Pennsylvania Gas Company* v. *Public Service Commission* (1920), 252 U.S. 23.) There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. (See *Missouri* v. *Kansas Gas Company* (1924), 265 U.S. 298, and *Public Service Commission* v. *Attleboro Steam and Electric Company* (1927), 273 U.S. 83.)

The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act.

* * *

"* * * The bill takes no authority from the State commissions and is so drawn as to complement and in no manner usurp State regulatory authority, and contains provisions for cooperative action with State regulatory bodies. * * *"

* * *

"Your committee believes that this legislation is highly desirable to fill the gap in regulation that now exists by reason of the lack of authority of the State commissions.

"In view of the importance of section 1(b), which states the scope of the act, it seems advisable to comment on certain provisions appearing therein. It will be noted that this subsection of the bill, after affirmatively stating the matters to which the act is to apply, contains a provision specifying what the act is not to apply to, as follows: 'but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.' The quoted words are not actually necessary, as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission, but similar language was in previous bills, and, rather than invite the contention, however unfounded, that the elimination of the negative language would broaden the scope of the act, the committee has included it in this bill. That part of the negative declaration stating that the act shall not apply to 'the local distribution of natural gas' is surplusage by reason of the fact that distribution is made only to consumers in connection with sales, and since no jurisdiction is given to the Commission to regulate sales to consumers the Commission would have no authority over distribution, whether or not local in character.

"It was urged in connection with earlier bills that there should be inserted at the end of this subsection a proviso as follows: 'Provided, That nothing in this Act shall be construed to authorize the commission to fix the rates or charges to the public for the sale of natural gas distributed locally.' In order to avoid misunderstanding the committee thought it necessary to omit this proviso from the present bill for the following reasons, even though there is entire agreement with the intended policy which would have prompted its inclusion: First, it would have been surplusage if interpreted as it was intended to be interpreted, and, second, it would have been, in all likelihood, a source of confusion if interpreted in any other way. For example, it was felt that in the effort to find a reason for its inclusion it might have been argued that it exempted sales to a publicly owned distributing company, and such an exemption is not, of course, intended. It is believed that the purposes of this proviso, assuming the need for any such provision, are fully covered in the present provision by the language— 'but shall not apply to any other * * * sales of natural gas.' "

Section 1(b) of the Natural Gas Act (15 U.S.C., 717(b)) provides that the same "shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution * * *." As indicated in House Report 709, the negative portion of Section 1 (b) of the Act was inserted by Congress for the express purpose of avoiding any possible contention that the Act was intended to vest in the Federal Power Commission authority to regulate local retail sales of natural gas. Therefore, it is settled beyond question that the power and authority of the

Federal Power Commission is limited by the Act to the transportation and sale of natural gas in interstate commerce.

Illinois Natural Gas Co. v. *Central Illinois Public Service Co.*, 314 U.S. 498;

Public Utilities Commission of Ohio v. *United Fuel Gas Co.*, 317 U.S. 456;

Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591.

D. The Federal and State Governments, each exercising exclusive power and authority in their respective spheres, regulate the transportation and sale of natural gas by a dual system under which the Federal regulation of transportation and sales in interstate commerce is intended to be complementary to the State regulation of local distribution.

Not only is it plain from the express language of the Natural Gas Act and the legislative history thereof that it was not intended to give the Federal Power Commission any power or authority to regulate local retail sales of natural gas but also it is clear therefrom that the Act contemplates a cooperative dual system of regulation over the transportation and sale of natural gas by the Federal and State Governments, each exercising exclusive power and authority in their respective spheres. These principles have already been firmly established by this Court. Thus in *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U.S. 456, it is stated at page 467:

> "It is clear, as the legislative history of the Act amply demonstrates, that Congress meant to create a comprehensive scheme of regulation which would be complementary in its operation to that of the states, without any confusion of functions. The Federal Power Commission would exercise jurisdiction over matters in interstate and foreign commerce, to the

extent defined in the Act, and local matters would be left to the state regulatory bodies. Congress contemplated a harmonious, dual system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere. See H. Rep. No. 2651, 74th Cong. 2d Sess. pp. 1-3; H. Rep. No. 709, 75th Cong. 1st Sess. pp. 1-4; Sen. Rep. No. 1162, 75th Cong. 1st Sess."

The plan of cooperative dual regulation by the Federal and State Governments is further developed and explained by this Court in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, wherein it is said at pages 609 and 610:

"We pointed out in *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U.S. 498, 506, 86 L. ed. 371, 376, 62 S. Ct. 384, that the purpose of the Natural Gas Act was to provide, 'through the exercise of the national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation.' As stated in the House Report the 'basic purpose' of this legislation was 'to occupy' the field in which such cases as *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U.S. 298, 68 L. ed. 1027, 44 S. Ct. 544, and *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83, 71 L. ed. 549, 47 S. Ct. 294, had held the States might not act. H. Rep. No. 709, 75th Cong. 1st Sess. p. 2. In accomplishing that purpose the bill was designed to take 'no authority from State commissions' and was 'so drawn as to complement and in no manner usurp State regulatory authority.' Id. p. 2. And the Federal Power Commission was given no authority over the 'production or gathering of natural gas.' § 1(b)."

The plan of cooperative action between Federal and State Governments is established by numerous provisions of the Natural Gas Act. Section 2(8) of the Act (15 U.S.C.

717a (8)) provides that "'State commission' means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality." Section 5(a) (15 U.S.C. 717d (a)) provides that "Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: • • •." Section 13 (15 U.S.C. 717L) provides that "Any State, municipality or State Commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this chapter may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission." Section 14a (15 U.S.C. 717m(a)) provides that the Commission may in its discretion make available to State commissions and municipalities, information concerning any matter under investigation by the Commission. Section 15a (15 U.S.C. 717n(a)) provides that "• • • In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commis-

sion, municipality or any representative of interested consumers * * *." Section 17(b) (15 U.S.C. 717p(b)) provides that "The Commission may confer with any State Commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act." and that "The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records and facilities as may be afforded by any State commission."

From the foregoing provisions of the Act the pattern of dual regulation by the Federal and State Governments over the whole course of transportation and sale of natural gas for public use is perfectly clear. The rights of consumers are protected by State regulation of retail distribution to consumers by local distributors, and in order that such distributors, whose operations are under State control, will be able to purchase their supplies of natural gas (delivered to them in the course of interstate commerce) at reasonable rates, Federal regulation steps in where the State power ends and exerts control over the operations of a natural-gas company in order to make certain that its rates to the local distributors are reasonable.

While both Federal and State legislation providing for regulation of the transportation and sale of natural gas is admittedly enacted in the public interest and for the ultimate benefit of the public consumers, nevertheless it is apparent from the various provisions of the Federal legislation discussed above that it was the intention of Congress thereby only to regulate the interstate phase of such transportation and sale and to leave the intra-

state phase for control by the several States through regulatory bodies established by their legislation. A dual system of regulation has therefore been enacted by the Federal and State Governments covering separate fields of jurisdiction, both of which go to make up a harmonious, cooperative and complete system of regulation and yet at the same time carefully preserving the right of the Federal and State Governments to control their respective spheres.

II.

THE COURT BELOW DID NOT HAVE JURISDICTION TO DETERMINE A CLAIM ON BEHALF OF THE CONSUMERS WHERE SUCH DETERMINATION REQUIRED THE COURT TO PASS UPON THE REASONABLENESS OF AND FIX LOCAL RETAIL RATES.

A. The decision of the court below finding that the fund in its possession belonged to the ultimate consumers necessarily involved a finding that the rates paid by the ultimate consumers to Central during that period were unreasonable and constituted fixing local retail rates.

As previously stated herein, the court below in its memorandum opinion of June 30, 1942, purported to fix the relative rights and interests in general of all local distributors and ultimate consumers in and to the total refund made by the Natural Gas Companies (R. 60-63). In the course of that opinion the court stated as follows:

> "Associated with this problem of costs, one utility serving Nebraska City asks that the refund go to it and not to its customers. That it and others may know and plan accordingly, we express our conclusion, and our holding, which is *all refunds which petitioners must make, belong to the consumers,* for whose

> benefit these proceedings were instituted. The utilities with whom petitioners contracted, were merely conduits, by which natural gas transported by petitioners was delivered to customers by utilities. The refunds do not belong and should not go to the utilities. * * *" (R. 62).

Although the above ruling was made more than a year prior to the time when Central became a party to the cause by filing its original petition (R. 106), nevertheless, it formed the basis for the order denying Central's original and supplemental petitions (R. 129-131, 146).

Thus in the first order entered on February 14, 1944, the court below denied Central's original petition asking that the fund of $25,708.54 be paid to it for the reason that the court had "* * * previously ruled that the refund made by Natural Gas Pipeline Company of America and Texoma Natural Gas Company belonged to the consumers of gas supplied by customers of said Natural Gas Pipeline Company of America and Texoma Natural Gas Company, * * *" (R. 129).

In the second order entered on the same date the court below directed payment of the fund in various amounts to the Treasurers of the four municipalities involved on the ground that "* * * said refund belongs to the consumers of gas residing in the Cities of Muscatine, Greenfield and Knoxville and Pella, all of the State of Iowa; * * *" (R. 130, 131).

On March 28, 1944, Central filed its supplemental petition (R. 134-139) raising the points on which certiorari was sought and granted. This petition was denied by the court below without assigning any reasons therefor (R. 146).

From the foregoing statement of the findings and rulings made in the orders denying Central's petitions it is apparent that the court below intended to and did award

the fund in dispute to the Treasurers of the four municipalities as representatives of the ultimate consumers. So far as Central was concerned, the award was made to its adverse claimants to the fund and the statements contained in the two orders of February 14, 1944, to the effect that the award was made without prejudice to Central's right to claim the fund before some other court or body (R. 129, 130) is meaningless since in any proceedings instituted by Central in Iowa it would immediately be contended that the court below had adjudicated that the fund belonged to the consumers. Moreover, the final order entered by the court denying Central's supplemental petition (R. 146), in which Central claimed the fund as a matter of legal right and raised the question of lack of jurisdiction of the court to award the fund to the consumers, denied Central's claim with prejudice and has the effect of being *res judicata* as to the points presented in Central's supplemental petition. The court below thereby awarded the fund absolutely to the consumers.

As a consequence of the orders denying Central's petitions the court below, while disclaiming jurisdiction to hear Central's claim to the fund (on the pretext that such involved a determination of the reasonableness of Central's rates), nevertheless exercised jurisdiction to award the fund to the ultimate consumers presumably on the ground that Central's rates were excessive during the refund period. This award is based on the conception that the fund belonged to the consumers because the rates paid by them to Central during the refund period as a matter of law included the excessive rates paid by Central to Natural Gas Pipeline Company of America during that period. Therefore, the decision necessarily involves a finding that the rates paid by the ultimate consumers to Central during the refund period were unreasonable and this in turn results in fixing local retail rates during the period.

B. The jurisdiction conferred on the court below by the Natural Gas Act is restricted to review of orders entered by the Commission.

The jurisdiction and powers of the court below are not only derived from but are limited by the terms of the Natural Gas Act (*Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 328 Fed 2d. 481, at page 483). The only provisions of the Act conferring jurisdiction on Courts of Appeal are subsections (b) and (c) of Section 19 thereof (15 U.S.C. 717r(b) and (c)). Subsection (b) provides that "Any party to a proceeding under this Chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia * * *" and subsection (c) provides that "* * * The commencement of proceedings under subsection (b) of this Section shall not unless specifically ordered by the court, operate as a stay of the Commission's order."

The only provision of the Act conferring jurisdiction on the Federal Power Commission to fix rates is Section 5(a) thereof (15 U.S.C. 717d(a)), which provides:

> "Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly dis-

criminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: Provided, however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates."

It is apparent from the foregoing provisions that the jurisdiction of Courts of Appeal is expressly limited to review of orders of the Commission, which orders are in turn limited to fixing rates paid by local distributors to a natural-gas company. Moreover, the scope of judicial review under Section 19(b) of the Act has been strictly limited to that defined in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575. Therein this Court said at page 586:

> "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

In view of the foregoing statement of this Court, it is clear that the jurisdiction granted by the Natural Gas

Act to Courts of Appeal on review of rate reduction orders of the Commission ends when it has been determined that the rate so fixed by the Commission is not confiscatory in the constitutional sense.

In considering the scope of judicial review of orders of the Commission by Courts of Appeal it is important not only to examine the affirmative provisions of the Natural Gas Act with respect thereto, but also to observe what the Act fails to do. Thus, the Act does not contain any provisions authorizing the Commission to fix interstate rates retroactively. It only permits the Commission to fix just and reasonable interstate rates to be "*thereafter observed*" (Section 5(a), 15 U.S.C. 717d (a)). Furthermore, the Commission is not vested with any authority to make reparation awards to persons injured as a result of violations of the Act. Certainly in view of these significant omissions from the Act and the limitations placed on judicial review by this Court in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, it is indisputable that the court below was without jurisdiction under the Natural Gas Act to make reparation awards to ultimate consumers of natural gas, especially when such action necessarily involved a finding that the rates paid therefor by such consumers were illegal and excessive and a determination equivalent to retroactively fixing local retail rates for such gas.

C. Under the Iowa Statutes the four municipalities involved were vested with exclusive power to regulate local retail rates for natural gas.

As indicated under sub-point B of point I of this Argument, the legislature of Iowa has delegated its power to fix local rates for natural gas to its municipalities. Such delegation is effected by Section 6143 of the Code of Iowa of 1939 (App. B 62). This section provides that cities

and towns "* * * shall have power to require every individual or private corporation operating such works or plant, * * * to furnish any person applying therefor, * * * with gas, heat, water, light or power, * * *; to regulate and fix the rents or rates of water, gas, heat and electric light or power; * * * and these powers shall not be abridged by ordinance, resolution, or contract."

In construing the foregoing statute, the Supreme Court of Iowa has laid down various principles which are pertinent here. Thus in *City of Tipton* v. *Tipton Light & Heating Co.*, 157 N.W. 844, it is held that the Legislature has the power to regulate the rates and charges of corporations rendering public service, and that it may delegate this power to its municipalities. Also it is held therein that rates fixed by a municipal ordinance pursuant to the statute constitute the maximum and minimum rates, that the rates as so fixed are presumptively reasonable, and that if such rates are attacked on the ground that they are unreasonable the only question which a court can consider is whether the enforcement of the rates will operate to deprive the utility of fair compensation for its services. In *Iowa Ry. & Light Co.* v. *Jones Auto Co.*, 164 N.W. 780, the Supreme Court of Iowa also held that the power vested in municipalities by the statute to regulate and fix rates of compensation *thereafter to be exacted* is a continuing one and can not be abridged by ordinance, resolution or contract.

The foregoing principles are affirmed and re-stated in the following decisions by the Supreme Court of Iowa:

Town of Williams v. *Iowa Falls Electric Co.*, 170 N.W. 815;

Knotts v. *Nollen*, 218 N.W. 563;

Incorporated Town of Mapleton v. *Iowa Public Service Co.*, 223 N.W. 476.

The above decisions clearly establish that an Iowa municipality in fixing rates by ordinance is exercising a legislative function which may not be interfered with by the courts unless the rates as so fixed are confiscatory in the constitutional sense. They further clearly establish that the ordinance rates are presumptively valid and that the burden of proof is on him who attacks the same to show that they are confiscatory. Also, it is settled by the Iowa decisions that the ordinance rates are the only rates which may be charged by a private public utility, that the municipalities may only fix rates prospectively, and that no limitation may be imposed by contract on the power to change these rates from time to time. Further it is apparent from the face of the statute that power to make reparation awards or to receive, administer or distribute the fund here in dispute is not thereby vested in Iowa municipalities.

D. The Court below in exercising ancillary jurisdiction to dispose of the fund in its possession did not have jurisdiction to determine the reasonableness of or to fix rates paid by ultimate consumers to Central during the refund period, since this function is reserved to the several States and is not within the judicial power conferred upon Federal courts by the Constitution.

As shown under sub-point B of point II of this Argument, Section 19(c) of the Natural Gas Act (15 U.S.C. 717r(c)) confers jurisdiction on Federal Courts of Appeal to stay orders of the Commission and, of course, such courts have inherent equity jurisdiction to impose reasonable conditions to granting a stay and to distribute funds accumulated in their possession, as a result of a stay, to the persons entitled thereto. This inherent equity jurisdiction does not, however, include jurisdiction to interfere with the power reserved to the States to fix local retail rates or to engage in the legislative function of fixing rates.

Thus in *Central Kentucky Natural Gas Co.* v. *Railroad Commission*, 290 U.S. 264, this Court held that a Federal district court could not, as a condition to granting relief against confiscatory local rates for natural gas fixed by the Kentucky Commission, impose requirements which resulted in a fixing of local rates by the district court. In this case, as in the instant case, the district court had funds in its possession representing rates charged ultimate consumers for natural gas in excess of those fixed by the Kentucky Commission. In respect of this fund, this court ruled that it was erroneous for the district court to require such funds to be distributed to the ultimate consumers until after the Kentucky Commission had exercised its power to fix just and reasonable rates. The reasoning on which this ruling is premised is expressed at pages 271 and 272 as follows:

> "There are nevertheless some limitations upon the extent to which a federal court of equity may properly go in prescribing such conditional relief, which are inherent in the nature of the jurisdiction which it exercises. District courts may set aside a confiscatory rate prescribed by state authority because forbidden by the Fourteenth Amendment, but they are without authority to prescribe rates, both because that is a function reserved to the state, and because it is not one within the judicial power conferred upon them by the Constitution. See *Newton* v. *Consolidated Gas Co., supra; Reagan* v. *Farmers' Loan & T. Co.*, 154 U.S. 362, 397, 38 L. ed. 1014, 1023, 14 S. Ct. 1047, 4 Inters. Com. Rep. 560; *Honolulu Rapid Transit & Land Co.* v. *Hawaii*, 211 U.S. 282, 53 L. ed. 186, 29 S. Ct. 55; cf. *Keller* v. *Potomac Electric Power Co.*, 261 U.S. 428, 67 L. ed. 731, 43 S. Ct. 445; *O'Donoghue* v. *United States*, 289 U.S. 516, 77 L. ed. 1356, 53 S. Ct. 740.
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> This Court has warned that the power to attach conditions to decrees enjoining state rates should be cautiously exercised. *Newton* v. *Consolidated Gas Co., supra* (258 U.S. 175, 66 L. ed. 547, 42 S. Ct. 264). The

practical effect of a denial of relief unless the plaintiff will submit to a rate, the reasonableness of which he challenges, is to make the surrender of the right to invoke a distinctively state legislative function the price of justice in the federal courts. The practice would tend to curtail the exercise of that function by action of a court which is itself without authority either to exercise it or to prevent the state from doing so. Such interference with the legislative functions is not a proper exercise of the discretionary powers of a federal court of equity. See *Honolulu Rapid Transit & Land Co.* v. *Hawaii*, 211 U.S. 282, 53 L. ed. 186, 29 S. Ct. 55, *supra*."

In *Newton* v. *Consolidated Gas Co.*, 258 U.S. 165 (cited in the foregoing quotation) it was held error for a district court in enjoining a confiscatory rate for gas fixed by a New York statute to impose as a condition to injunctive relief that all collections in excess of 80¢ per thousand cubic feet for gas be impounded for ultimate distribution in accordance with any rate thereafter to be established by competent authority of the State of New York. In this connection, this Court at pages 176, 177 and 178 said:

"In No. 258, the Gas Company complains of the limit of $1.20 per thousand cubic feet up to March 1, 1921, as a condition to continuation of the injunction, and also because sums above 80 cents per thousand were impounded for ultimate distribution in accordance with any rate which might be fixed thereafter by competent state authority.

It was within the court's discretion to grant the injunction upon terms, and we cannot now say that the limitation upon charges amounted to abuse. But grave injustice may result from action of this kind, and the power should be very cautiously exercised. See *Morrell* v. *Brooklyn Borough Gas Co.* (July 14, 1921) 231 N.Y. 398, 132 N.E. 129. It was error to direct ultimate distribution of the impounded funds in accordance with any subsequently approved rate.

> Rate making is no function of the courts, and should not be attempted, either directly or indirectly. After declaring the 80-cent rate confiscatory, the court should not have attempted, in effect, to subject the company for an indefinite period to some unknown rate to be proclaimed in the future, upon consideration of conditions then prevailing.
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> • • •
>
> All impounded funds should be promptly released to the Gas Company, subject only to deductions for such costs as are clearly assessable to the prevailing party. • • •"

In view of the foregoing decisions, it must be concluded that a Federal court, even though exercising ancillary jurisdiction over a fund in its possession, does not have authority to limit in any way the power reserved to the States to govern purely local matters or to usurp legislative functions.

If the principles announced by this Court in *Central Kentucky Natural Gas Co.* v. *Railroad Commission*, 290 U.S. 264, are applied to the instant case, it must follow that the court below was without jurisdiction to award the fund here in dispute to the ultimate consumers, since the making of the award resulted not only in interference with the reserved power of the State of Iowa but also with the legislative function of the four Iowa municipalities involved to fix local retail rates. As shown above, Iowa municipalities are vested with the exclusive right to fix such rates and the courts of Iowa will not interfere with this legislative function unless the exercise thereof results in confiscation. These principles have even been announced and followed by the court below in *Natural Gas Pipeline Co.* v. *Federal Power Commission*, 141 Fed. 2d 27.

III.

THE COURT BELOW DISREGARDED THE COOPERATIVE DUAL SYSTEM OF REGULATION BY THE FEDERAL AND STATE GOVERNMENTS PROVIDED FOR IN THE NATURAL GAS ACT BY AWARDING THE FUND HERE IN DISPUTE DIRECTLY TO THE ULTIMATE CONSUMERS.

While the Natural Gas Act admittedly was enacted in the public interest, nevertheless it is likewise clear from the provisions of the Act (as demonstrated under subpoint D of point I of this Argument) that Congress did not thereby intend to accomplish more than regulation of the interstate phase of transportation and sale of natural gas and that it did not intend to invade the field of State regulation over retail sales of such gas. Further, it is apparent from the provisions of the Act that the benefits arising from the administration thereof were intended to accrue to the ultimate consumers only as a result of complementary action by State regulatory bodies.

The method whereby the public interest inherent in the Natural Gas Act is protected under the cooperative dual system of regulation contemplated thereby is self evident. Thus in actual practice a reduction by the Federal Power Commission in interstate rates paid by a local distributor to a natural-gas company may result in such a saving to the distributor that it will be required to pass on the saving, or at least a part thereof, to its retail purchasers from and after the time when the State regulatory body having jurisdiction of retail rates (upon consideration of all of the numerous factors involved in rate making) fixes a new schedule of rates to be charged by the distributor.

Of course, the reduced cost of natural gas to a local distributor is one of the factors to be taken into consideration by a State regulatory body in fixing retail rates, but it is not the only factor, since other operating expenses, the original cost of construction of the local distributor's plant, the amount expended in permanent improvements thereto, the amount and market value of its bonds and stocks, etc., are all proper elements to be considered by a local regulatory body in fixing retail rates (*Cedar Rapids Gas Light Co.* v. *City of Cedar Rapids*, 120 N.W. 966, affirmed by this Court in 223 U.S. 655). Therefore, it does not necessarily follow, as assumed by the court below, that a reduction in interstate rates paid by a local distributor to a natural-gas company is *ipso facto* extended to the ultimate consumers by a proportionate reduction of rates paid by them to such distributor. A local regulatory body is required to approve or fix rates in recognition of the right of the local distributor to earn a fair return on its investment as well as the right of ultimate consumers to purchase natural gas at fair and reasonable rates (*Cedar Rapids Gas Light Co.* v. *City of Cedar Rapids*, 120 N.W. 966, affirmed by this Court in 223 U.S. 655).

The decision as to what is a proper rate to be paid by the ultimate consumers is, in the final analysis, a question exclusively in the field of State regulation. If the State authority deems it proper to do so, it may pass on to the ultimate consumers the benefit of all or only a part of any reduction ordered by the Federal Power Commission in the interstate rates paid by the local distributor, or it may decide that under all of the circumstances the consumers are not entitled to any reduction in intrastate rates. In any event, the Federal Power Commission, having discharged its duty by ordering a reduction of interstate rates, is powerless to follow through and order any

change in past or future rates paid or to be paid by the ultimate consumers, since that is a function entirely within the field of State regulation.

Illinois Natural Gas Co. v. *Central Illinois Public Service Co.*, 314 U.S.498;
Public Utilities Commission of Ohio v. *United Fuel Gas Co.*, 317 U.S. 456;
Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591.

Despite the aforesaid limitations on Federal jurisdiction or power, the court below determined that the entire refund made by the Natural Gas Companies belonged and should be awarded directly to the ultimate consumers. This was done on the theory that the proceedings before the Federal Power Commission in which the rate reduction order here involved was entered were solely for the benefit of the ultimate consumers and that the local utilities were merely conduits and trustees for such consumers (R. 62, 63). As a result the court below arrogated to itself the power denied the Federal Power Commission and reserved exclusively for exercise by the States by the express terms of the Natural Gas Act and failed to observe that the ultimate purpose of the Act, namely, benefit to consumers, is intended to be accomplished only within the machinery of the joint system of regulation afforded by both Federal and State legislation and that protection of the public interest under the Act is restricted to public interest in interstate commerce and does not include public interest in local distribution.

The determination of the court below that the total refund belonged to the ultimate consumers violated not only the whole concept of joint regulation, but also involved a retroactive reduction of local retail rates without consideration of any of the factors which a State regulatory body would be required to consider in fixing such

rates prospectively. As indicated above, a local distributor is entitled to have a State regulatory body consider all of the various factors which go to make up its investment and cost of doing business and therefrom fix rates which will permit the local distributor to earn a fair return on its investment. These are not, however, the only questions which a local regulatory body would be required to consider in determining whether an interstate rate reduction effected by the Federal Power Commission should be passed on to ultimate consumers.

The facts in the instant case suggest many additional questions which would have to be resolved by a local regulatory body before an interstate rate reduction is passed on to the ultimate consumers such as whether the benefits should be passed on equally to consumers using natural gas mixed with artificial gas and consumers using only natural gas (the court below disregarded the fact that Central, in connection with certain of its retail sales, mixed natural gas with artificial gas and divided a part of the fund here in dispute according to the number of consumers in each municipality rather than on the basis of the amount of natural gas they had consumed (R. 130, 131)); whether the benefits should be passed on only to home users of natural gas for cooking purposes or also to users of natural gas for home heating and industrial purposes (the court below by its decree of September 3, 1942, found that only consumers using natural gas for cooking purposes were entitled to the benefit of the interstate rate reduction and that industrial users and home heating users were not entitled to any of the benefits (R. 67-70)), etc. Questions such as these would necessarily have to be considered in arriving at a final decision as to whether the ultimate consumers would be entitled to the benefits of an interstate rate reduction and also the answer to these questions, as appears from a mere statement thereof, resides wholly within the province of a State regulatory body. Thus

the finding of the court below that the refund made by the Natural Gas Companies belonged *in toto* to the ultimate consumers was not only a finding not warranted by the evidence but was a direct extension of Federal authority into the field of State regulation and a complete disruption of the whole theory of joint regulation by the Federal and State Governments, each acting exclusively within its sphere.

As indicated above, the Iowa municipalities involved under Section 6143 of the Iowa Code might have fixed a new schedule of local retail rates at any time after the entry of the interstate rate reduction order of the Federal Power Commission. Neither the Federal Power Commission nor the court below could take that action. Nevertheless the court below, apparently on the theory that State regulatory bodies were unable to reduce local retail rates retroactively so that the consumers might share in the benefits of the refund during the period prior to the promulgation of reduced retail rates by the municipalities, sought under the guise of making equitable distribution of the refund to in effect reduce local retail rates retroactively by awarding the refund to the consumers. In other words, the court below attempted to retroactively fix rates to consumers, although without power to do so prospectively.

Central submits that a mere claimed inadequacy of State regulatory machinery or a failure of local officials to use that machinery to adequately protect the consumers in their present claim to retroactive relief is not sufficient to vest the court below with power which it did not otherwise have. The remedy of the local consumers in the instant case was and is applicable to their respective municipalities to fix a new schedule of rates so as to pass on the benefits of the rate reduction order of the Federal Power Commission to the consumers if after consideration of

all rate factors they are entitled to such reduction (*Woodrich* v. *Northern Pacific Railway Company*, 71 Fed. 2d 732, C.C.A. 8th Cir., and *Frank A. Graham Ice Co.* v. *Chicago M. & St. P. Ry. Co.*, 140 N.W. 1097, Sup. Ct. of Wis.).

Whether under Iowa law the consumers could enforce a claim against Central by way of reparation is uncertain. Central believes, however, that it is not required in the instant case to speculate upon what the Iowa law in that regard may be. Suffice it to say that a mere claim of failure on the part of State machinery to accomplish equity for the consumers is not a proper basis on which to predicate the exercise of Federal jurisdiction over any part of the field in which State regulatory power is supreme.

IV.

CENTRAL, AS A MATTER OF LEGAL RIGHT, IS ENTITLED TO THE FUND IN DISPUTE.

A. The Natural Gas Act contains a clear implication that refunds representing excessive rates paid to a natural gas company shall be made to the person who paid such rates.

The Natural Gas Act does not, by implication or otherwise, declare that the benefit of a rate reduction order of the Commission, or the benefit of a refund made as a consequence of the payment of excessive rates, shall be awarded by the Commission or the Federal courts directly to the ultimate consumers. On the contrary, Section 4 of the Act (15 U.S.C. 717c) contains a strong implication that refunds made as a result of the payment of excessive rates shall be made directly to the person who paid the same.

Section 4(d) of the Act (15 U.S.C. 717c(d)) in general sets forth the method whereby a natural-gas company may make a new schedule of increased rates effective. Section 4(e) (15 U.S.C. 717c(e)) provides, among other things, that "* * * Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, *specifying by whom and in whose behalf such amounts were paid*, and, upon completion of the hearing and decision to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. * * *" (Italics supplied.)

The apparent purpose of the foregoing provision requiring a natural-gas company, under the conditions designated, to keep accounts specifying by whom and in whose behalf such amounts were paid is to provide a record so that refunds may be made to the persons who actually paid the increased rates represented by the new schedule.

Of course, there is no distinction in principle between refunds made as a consequence of the refusal of the Commission to approve a new schedule of increased rates filed by a natural-gas company and a refund made as a result of an improper stay of a rate reduction order of the Commission by a Court of Appeals acting under its general equity powers. In either case the refund should be made to the person entitled thereto according to the intention of Congress as expressed in the Natural Gas Act, and its intention, as indicated herein, is that the refund should be made to the person who actually paid the increased rates to the natural-gas company, which in the instant case was Central.

B. Under the common law, only the person who actually pays excessive rates to a public utility is entitled to reparation therefor.

Central paid the excessive rates to Natural Gas Pipeline Company of America during the period of the erroneous stay by the court below of the rate reduction order of the Federal Power Commission (R. 106) and it was these payments which gave rise to the fund here in dispute (R. 29, 30, 36, 37). Thus Central was the only party in privity of contract with Natural Gas Pipeline Company of America and under the common law rule was the only party entitled to reparation on account of the excessive rates paid by it as a result of the stay.

In *Arizona Grocery Co.* v. *Atchison, Topeka and Santa Fe Railroad Company*, 284 U.S. 370, this Court stated the common law rule at page 383 as follows:

> "The exaction of unreasonable rates by a public carrier was forbidden by the common law. *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 145 U.S. 263, 275, 36 L. ed. 699, 703, 4 Inters. Com. Rep. 92, 12 S. Ct. 844. The public policy which underlay this rule could, however, be vindicated only in an action brought by him who paid the excessive charge to recover damages thus sustained. Rates, fares, and charges were fixed by the carrier, which took its chances that in an action by the shipper these might be adjudged unreasonable and reparation be awarded."

The reasoning on which the above common law rule is premised is discussed in *Southern Pacific Company* v. *Darnell-Taenzer Lumber Company*, 245 U.S. 531. In that case this Court held that the right to recover excessive freight rates from a public carrier is vested in the party who paid such rates irrespective of the fact that he has passed on the burden thereof to someone else. While this decision arose under the reparation provisions of the Inter-

state Commerce Act (34 Stat. 590, c. 3591, Sec. 5), the same is pertinent here inasmuch as that Act did not then specify who was entitled to reparation. In arriving at its decision the court stated at pages 533 and 534 as follows:

> "• • • The general tendency of the law, in regard to damages, at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant, so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law, and it does not inquire into later events. *Olds* v. *Mapes-Reeve Constr. Co.*, 177 Mass. 41, 44, 58 N.E. 478. Perhaps strictly the securing of such an indemnity as the present might be regarded as not differing in principle from the recovery of insurance, as *res inter alios*, with which the defendants were not concerned. If it be said that the whole transaction is one from a business point of view, it is enough to reply that the unity in this case is not sufficient to entitle the purchaser to recover, any more than the ultimate consumer, who in turn paid an increased price. He has no privity with the carrier. *State* v. *Central Vermont R. Co.*, 81 Vt. 459, 21 L.R.A. (N.S.) 949, 71 Atl. 193. See *Nicola, S. & M. Co.* v. *Louisville & N. R. Co.*, 14 Inters. Com. Rep. 199, 207-209; *Baker Mfg. Co.* v. *Chicago & N. W. R. Co.*, 21 Inters. Com. Rep. 605. The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum. *New York, N. H. & H. R. Co.* v. *Ballou & Wright*, P.U.R. 1918A, 149, 155 C. C. A. 450, 242 Fed. 862. Behind the technical mode of statement is the consideration, well emphasized by the Interstate Commerce Commission, of the endlessness and futility of the effort to follow every transaction to its ultimate result. 13 Inters. Com. Rep. 680. Probably in the end the public pays the damages in most cases of compensated torts."

It is clear from the foregoing pronouncements of this Court that under the common law rule only the person in privity of contract with the public utility, or in other words the person who paid the excessive rates, is entitled to recover the same from the public utility. Therefore, since Central in the instant case was the person who paid the excessive rates to Natural Gas Pipeline Company of America during the refund period, it is the only one who, as a matter of legal right, is entitled to a refund of these rates.

C. Under the terms of the stay orders entered by the court below and the bonds filed by the Natural Gas Companies to obtain the stay, Central is entitled to the refund.

The orders of the court below staying the rate reduction order of the Federal Power Commission and the bonds filed by the Natural Gas Companies (and approved by the court) to obtain the stay expressly provide that any refunds by the Natural Gas Companies, if made, should be made to the purchasers at wholesale from the Natural Gas Companies (R. 28, 29, 30, 31, 32, 33, 34, 35, 36). Central was, of course, a wholesale purchaser of natural gas from Natural Gas Pipeline Company of America during the refund period, and the aforesaid orders and bonds were particularly designed for its protection as well as the protection of the other purchasers at wholesale.

Notwithstanding the fact that the aforesaid orders and bonds were expressly conditioned for the benefit of Central, the court below nevertheless directed that the refund be made to the ultimate consumers (R. 130, 131). This action is contrary to the decisions of this Court. Thus *In the Matter of Lincoln Gas & Electric Light Co.*, 256 U.S. 512, this Court held that a bond posted with a district court to obtain a stay of utility rates fixed by a municipal

ordinance should on the coming down of a mandate from this Court be enforced according to its terms. In this connection, the Court at pages 516 and 517 said:

> "* * * The necessary meaning (of the mandate) is that the court below should proceed to carry our decision into full effect according to right and justice; and, manifestly, this could not be done without proceeding to enforce the supersedeas bond according to its terms. * * * To retain jurisdiction for the purpose of requiring that restitution be made according to the terms of the bond was and is a necessary part of the duty of the district court under the mandate.
>
> The case is within the principle of *Arkadelphia Mill Co.* v. *St. Louis Southwestern R. Co.*, 249 U. S. 134, 143-147, 63 L. ed., 517, 523-525, P.U.R. 1919C, 710, 39 Sup. Ct. Rep. 237."

Since a supersedeas bond under the decisions of this Court is entitled to the same sanctity as a contract made outside the province of a court, and since the bonds in the instant case were expressly conditioned for the benefit of Central, the fund involved should be adjudged to belong to Central as a matter of legal right.

D. Under the decisions of this Court it was the mandatory duty of the court below to adjudicate Central's legal right to the fund in dispute.

The court below in its orders of February 14, 1944, denying Central's petition and directing payment of the fund to the Treasurers of the four municipalities involved, recited not only that the ultimate consumers were the owners of the fund but also that it was desirous of paying the same at the earliest possible date to the parties entitled thereto and "to permit of a determination of said rights by a court or body having jurisdiction thereof" (R. 129, 130). In effect, the court below by these orders, while disclaiming jurisdiction, nevertheless exercised jurisdiction

to award the fund to the ultimate consumers and inconsistently ruled that the award should not be considered as final. As a result, the court below in effect refused to consider the equities of Central's claim to the fund and shifted the responsibility for the determination of these equities to another tribunal.

Central submits that this action of the court below was erroneous because that court was subject to a mandatory duty to exercise its jurisdiction (as limited by the provisions of the Natural Gas Act, by the decision of this Court in *Central Kentucky Natural Gas Co.* v. *Railroad Commission*, 290 U. S. 264, and by the decision of the court below in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 141 Fed. 2d 27) to finally determine that Central was entitled to the fund. The premise for this contention resides in the decision of this Court in *United States* v. *Morgan*, 307 U.S. 183, wherein it was held that it was the mandatory duty of a Federal court, in exercising ancillary jurisdiction over a fund, to finally adjudge the rights of the claimants thereto. This principle was even followed by the court below in *Natural Gas Pipeline Co. of America* v. *Federal Power Commission*, 128 Fed. 2d 481.

If the foregoing principle of law as laid down by this Court and the court below is accepted, it follows that it was the mandatory duty of the court below to award the fund to Central upon the basis that it was entitled thereto under the terms of the Natural Gas Act, the applicable common law rule, and the terms of the supersedeas bond filed by the Natural Gas Companies in this cause. Clearly the court below erred in directing payment of the fund to the Treasurers of the four municipalities since this involved fixing retail rates for natural gas retroactively, which constituted interference with the reserved power of the State of Iowa and a usurpation of the legislative function of fixing retail rates vested in the four municipalities by Section 6143 of the Code of Iowa.

CONCLUSION.

For each of the reasons discussed above, Central respectfully submits that the orders of the court below entered on February 14, 1944, and March 28, 1944 (R. 129-131, 146) should be reversed and that this cause should be remanded with directions that an order be entered awarding the fund here in dispute to Central.

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APPENDIX.

NATURAL GAS ACT.

A. Pertinent Sections of The Natural Gas Act (15 U. S. C. 717)

SECTION 1. (15 USC 717) (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

SEC. 2. (15 USC 717a (3-9)) When used in this act, unless the context otherwise requires—

* * * *

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Colu a, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

* * * *

SEC. 4. (15 USC 717c (a-e)) (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue

preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own

initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that

the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

* * * *

SEC. 5. (15 USC 717d (a-b)) (a) Whenever the Commission, after a hearing had upon its own motion or upon compiaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however*, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no au-

thority to establish a rate governing the transportation or sale of such natural gas.

* * * * *

SEC. 13. (15 USC 717l) Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this act may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

* * * * *

SEC. 15. (15 USC 717n (a)) (a) Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

* * * * *

SEC. 17. (15 USC p (a-c)) (a) The Commission may refer any matter arising in the administration of this act to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated

by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reim-

bursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

* * * *

SEC. 19. (15 USC 717r (a-c)) (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commis-

sion shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsec-

tion (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

* * * *

B. Pertinent Sections of the Code of Iowa of 1939.

Chapter 312.

HEATING PLANTS, WATER OR GAS WORKS, AND ELECTRIC PLANTS.

6127 Cities and Towns * * *.

6143 Regulation of rates and service. They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, heat, water, light, or power, and to supply said city or town with water for fire protection, and with gas, heat, water, light, or power for other necessary public purposes and to regulate and fix the rent or rate for water, gas, heat, light, or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract. (C73, §§473, 475; C97, §725; S13, §725; C24, 27, 31, 35, §6143.)

Chapter 329

CITIES UNDER SPECIAL CHARTER.

6788 Heating, water, gas, and electric plants. Sections 6129 and 6134 to 6143, inclusive, and 6134.01 to 6134.11, inclusive, are applicable to cities acting under special charters. (C97, §§722, 952; S13, §§722, 952; C24, 27, 31, 35, §6788; 47GA, ch. 166, §1.)